

STAFF REPORT

Point-of-Use and Point-of-Entry Regulations

Title 22, California Code of Regulations, 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7

SUMMARY OF PROPOSAL

The State Water Resources Control Board (State Water Board) is required by AB 434 (2015), which amended Health and Safety Code (HSC) sections 116380 and 116552, to adopt regulations governing the use of point-of-use (POU) treatment devices and point-of-entry (POE) treatment devices by a public water system (PWS), in lieu of centralized treatment. HSC section 116380 requires the State Water Board to adopt the regulations as emergency regulations, exempt from the rulemaking provisions of the Administrative Procedure Act (APA). The law also provides that the emergency regulations are to remain in effect until the earlier of January 1, 2018, or the effective date of the regulations to be adopted by the State Water Board in accordance with the APA. The current proposal is to adopt the emergency regulations for use of POU and POE treatment devices.

BACKGROUND

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the U.S. Safe Drinking Water Act of 1974, as amended (42 U.S.C. §300f et seq.), as well as by the State Water Board under the California Safe Drinking Water Act (SDWA) (HSC div. 104, pt. 12, ch. 4, §116270 et seq.). Pursuant to HSC section 116380, the State Water Board has authority to adopt the subject regulations.

Pursuant to section 116270 of the HSC, et al., it is the objective of the California SDWA for PWSs to deliver drinking water to consumers that is, at all times, pure, wholesome, and potable. Drinking water is commonly delivered to consumers via distribution systems, with consumers' service lines being connected to the distribution system. When treatment is necessary due to contamination, centralized treatment is typically utilized, ensuring the drinking water within the distribution system, as a whole, meets all drinking water standards. Alternatively, a POE treatment device provides necessary treatment of the distribution system water at or near the point at which the water enters a consumer's house or a building, as opposed to providing centralized treatment for the entire distribution system. Similarly, a POU treatment device does not provide centralized treatment for the entire distribution system, since the POU device is installed at a single tap (or taps) and is used to reduce the contaminants at that tap only.

In accordance with AB 1540 (2009) and AB 2515 (2010), the California Department of Public Health (CDPH) adopted two sets of emergency regulations, one governing the use of POU treatment devices, and the other POE treatment devices, in 2010 and 2011, respectively. The regulations were repealed by operation of law on January 1, 2014.

The primary revisions to statute resulting from AB 434, the legislation that took effect in 2015, were the expansion of the requirements of section 116552 to POE treatment devices for: public hearings; the need for a finding of no substantial opposition; and the time constraint limiting issuance of a permit to three years or until funding for centralized treatment is available (whichever occurs first). Those requirements previously only applied to POU treatment devices. Other revisions are non-substantive. The proposed regulations are substantially similar to the now-repealed POU and POE regulations, except as described below. The chief differences are applying the time constraint to POE treatment devices and a revision to the method of determining no substantial community opposition. The need for public hearings and a finding of no substantial community opposition were requirements of the now-repealed regulations for POE treatment devices. In addition, the regulations specifically permit a PWS to install POU or POE treatment devices for purposes other than compliance.

The proposed regulations take into consideration comments received and experience implementing the regulations previously adopted by CDPH. In addition, a briefing for stakeholders was held on October 9, 2015, during which comments were received on the draft regulations that also were considered by staff.

STATUTORY REQUIREMENTS AND SUMMARY OF THE REGULATIONS

HSC section 116380 provides that the emergency regulations, and the subsequent standard regulations that are subject to the APA and will need to be effective by January 1, 2018, allow the use of POU and POE treatment devices where: 1) it can be demonstrated that centralized treatment is not economically feasible; 2) the water system has less than 200 service connections; 3) usage is not prohibited by federal Safe Drinking Water Act and its implementing regulations and guidance; and 4) the water system has submitted an application for funding to correct the violation for which the POU or POE treatment is provided.

In addition, HSC section 116552 provides that the State Water Board may not permit a PWS to use POU or POE treatment devices unless the State Water Board has determined, following a public hearing, that there is no substantial community opposition to the installation of the devices. Additionally, a permit issued by the State Water Board to a PWS allowing POU or POE treatment devices in lieu of centralized treatment, is limited to not more than three years, or until funding for centralized treatment is available, whichever occurs first.

In accordance with these statutory requirements, the criteria listed below are addressed in the proposed regulations:

- PWSs must have fewer than 200 service connections.
- PWSs must demonstrate that centralized treatment is not immediately economically feasible.
- POU treatment devices cannot be used for microbials, volatile organic compounds, or radon.
- PWS must submit an application for funding.
- PWSs choosing to use POU or POE treatment devices must demonstrate no substantial community opposition and have a public hearing.
- A permit for use of POU/POE treatment devices is limited to no longer than three years or until funding for centralized treatment becomes available, whichever comes first.
- PWSs must have programs/plans in place for assuring safe and effective use of POU/POE treatment devices.
- POU/POE treatment devices must be owned, controlled and maintained by the PWS or by a person under contract with the PWS.
- POU/POE treatment devices must be equipped with mechanical warnings to ensure that customers are automatically notified of operational problems.
- Generally, POU/POE treatment devices must be third-party certified¹ to the applicable American National Standards Institute (ANSI) standard, if one exists.
- For POE treatment devices, every building connected to the PWS must have a POE treatment device installed, and that the rights and responsibilities of the customer convey with title upon sale of property.
- For POU treatment devices, every residential unit, commercial unit, etc., must have a POU treatment device installed at no less than one tap.

Therefore, in accordance with HSC sections 116380 and 116552, the State Water Board proposes the following changes to Title 22, California Code of Regulations:

- Adopt Article 2.5, establishing requirements for use of POU treatment devices by a PWS, which includes the proposed adoption of sections summarized as follows:
 - Section 64417 (Point-of-use treatment device or POU), defining point-of-use treatment device;
 - Section 64418 (General Provisions), establishing general provisions for POU treatment devices by a PWS, including contaminant constraints and permitting for a PWS to utilize POU treatment devices in lieu of centralized treatment;
 - Section 64418.1 (Economic Feasibility of Centralized Treatment), establishing the economic feasibility criteria a PWS must meet to be permitted to utilize POU treatment devices in lieu of installation of centralized treatment;
 - Section 64418.2 (POU Requirements), establishing criteria specific to POU treatment devices;

¹ Certification to an ANSI standard must be from an ANSI-accredited product certification organization. NSF International, the Water Quality Association, and Underwriters Laboratories, are examples of such organizations.

- Section 64418.3 (POU Treatment Strategy), establishing the criteria for a PWS's treatment strategy plan when employing POU treatment devices in lieu of centralized treatment;
 - Section 64418.4 (POU Operations and Maintenance (O&M) Program), establishing the criteria for a PWS's operations and maintenance program;
 - Section 64418.5 (POU Monitoring Program), setting forth minimum monitoring requirements and criteria for development of a PWS monitoring program;
 - Section 64418.6 (Public Hearing and Acceptance), establishing public hearing criteria and minimum public acceptance requirements that must be met to use POU treatment devices in lieu of centralized treatment; and
 - Section 64418.7 (Recordkeeping, Reporting, and Compliance), setting forth recordkeeping, reporting, and compliance criteria for a PWS using POU treatment devices in lieu of centralized treatment.
- Adopt Article 2.7, establishing requirements for use of POE treatment devices by PWS as follows:
 - Section 64419 (Point-of-entry treatment device or POE), defining point-of-use treatment device;
 - Section 64420 (General Provisions), establishing general provisions for POE treatment devices by a PWS, including permitting requirements for a PWS to utilize POE treatment devices in lieu of centralized treatment;
 - Section 64420.1 (Economic Feasibility of Centralized Treatment), establishing the economic feasibility criteria a PWS must meet to be permitted to utilize POE treatment devices in lieu of installation of centralized treatment;
 - Section 64420.2 (POE Requirements), establishing criteria specific to POE treatment devices;
 - Section 64420.3 (POE Treatment Strategy), establishing the criteria for a PWS's treatment strategy plan when employing POE treatment devices in lieu of centralized treatment;
 - Section 64420.4 (POE Operations and Maintenance (O&M) Program), establishing the criteria for a PWS's operations and maintenance program;
 - Section 64420.5 (POE Monitoring Program), setting forth minimum monitoring requirements and criteria for development of a PWS monitoring program;
 - Section 64420.6 (Public Hearing and Acceptance), establishing public hearing criteria and minimum public acceptance requirements that must be met to use POE treatment devices in lieu of centralized treatment; and
 - Section 64420.7 (Recordkeeping, Reporting, and Compliance), setting forth recordkeeping, reporting, and compliance criteria for a PWS using POE treatment devices in lieu of centralized treatment.

The regulations would require that each building served by the PWS have the POU or POE treatment device installed if the use is intended as an alternative to centralized treatment to bring a system into compliance with drinking water standards. In addition, the regulations would also permit a PWS to install POU or POE treatment devices on fewer than 100% of buildings that it serves, but the PWS will not be considered to be in compliance with drinking water standards. The latter provision will assist PWSs that

would like to install POU or POE treatment devices in separate zones or individual homes within its service area, rather than in 100% of buildings because, for example, use in some of the buildings is not practical or accepted by customers.

The net effect of the proposed regulations would be to establish specific regulatory criteria for general application of PWSs choosing to utilize POU treatment devices and/or POE treatment devices in lieu of installation and operation of more costly centralized treatment.

POLICY STATEMENT OVERVIEW

Problem Statement: The objective of the California SDWA is for PWSs to deliver drinking water to consumers that is, at all times, pure, wholesome, and potable. Drinking water is commonly delivered to consumers via distribution systems, with consumers' service lines being connected to the distribution system. When treatment is necessary due to contamination, centralized treatment is typically utilized, ensuring the drinking water throughout the distribution system meets all drinking water standards.

Objective (Goal): The broad objective of this proposed regulatory action is to:

- Adopt drinking water regulations governing the use of POU treatment devices and POE treatment devices by a PWS, which:
 - assure availability of pure, wholesome, and potable drinking water to consumers when an applicable PWS and its customers choose treatment via POU or POE in lieu of centralized treatment;
 - are consistent with and no less stringent than the statutory requirements of the California SDWA.

Benefit: The anticipated benefit, including any nonmonetary benefit to the protection of public health and safety of California residents, worker safety, and the state's environment, from this proposed regulatory action is to:

- Allow a viable and affordable means of providing drinking water, which meets all drinking water standards, to a PWS serving a small community that may not be otherwise able to readily afford centralized treatment.

HUMAN RIGHT TO WATER

Water Code Section 106.3 provides:

- (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- (b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.
- (c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).
- (d) This section shall not apply to water supplies for new development.
- (e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

The adoption of these proposed regulations will advance the policy embedded in Water Code section 106.3 by making drinking water for human consumption more affordable and more accessible. Public water systems whose drinking water sources are contaminated and who cannot afford to install centralized treatment will be able to install POU or POE treatment devices in homes within their service area. POU devices treat the water at the tap where they are installed and POE devices treat all water entering the home, thereby reducing contaminants in drinking water. In addition, the proposed regulations allow use of these devices even if not all residents agree to their use, thus increasing the options available to individuals for obtaining safe drinking water.

RECOMMENDATION

The staff recommends that the proposed regulations be adopted by the State Water Board. If adopted by the State Water Board, staff will submit the regulations to the Office of Administrative Law as "File and Print" regulations. The regulations are exempt from review by the Office of Administrative Law and would become effective upon filing by the Office of Administrative Law with the Secretary of State.